

AMENDED IN ASSEMBLY JANUARY 7, 2008

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1648

Introduced by Assembly Member Leno

February 23, 2007

An act to amend Section ~~832.7~~ 6211 of the Family Code, and to amend Section 273.5 of the Penal Code, relating to ~~peace officer records~~ domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 1648, as amended, Leno. ~~Peace officer records. Domestic violence: victims: domestic partners.~~

Existing law defines “domestic violence,” for purposes of provisions relating to protective orders, law enforcement response, and domestic violence centers, as abuse perpetrated against a person sharing or formerly sharing a specified type of relationship with the abuser. Existing law also makes it a felony for any person to willfully inflict corporal injury resulting in a traumatic condition on that person’s spouse, former spouse, cohabitant, former cohabitant, or mother or father of his or her child. Under existing law, registered domestic partners and former registered domestic partners have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses.

This bill would state that abuse perpetrated against a registered domestic partner or a former registered domestic partner is “domestic violence.” This bill would, additionally, state that it is a felony for any person to willfully inflict corporal injury resulting in a traumatic condition on that person’s registered domestic partner or former registered domestic partner.

~~Existing law generally regulates the confidentiality of various peace officer records, including records pertaining to disciplinary matters, as specified.~~

~~This bill would provide that the confidentiality of peace officer records, as specified, does not apply to specified government bodies that review the investigations, findings, or employment actions of a department or agency. The bill would make specified information in certain disciplinary records pertaining to peace officers available to the public, as specified.~~

~~This bill would state the intent of the Legislature to abrogate the decision of the California Supreme Court in Copley Press v. Superior Court.~~

~~By imposing additional duties on local law enforcement agencies in connection with providing discipline records of peace officers, as specified, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.
State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6211 of the Family Code is amended to
- 2 read:
- 3 6211. “Domestic violence” is abuse perpetrated against any of
- 4 the following persons:
- 5 (a) A spouse or former spouse.
- 6 (b) A registered domestic partner or former registered domestic
- 7 partner.

1 ~~(b)~~

2 ~~(c)~~ A cohabitant or former cohabitant, as defined in Section
3 6209.

4 ~~(e)~~

5 ~~(d)~~ A person with whom the respondent is having or has had a
6 dating or engagement relationship.

7 ~~(d)~~

8 ~~(e)~~ A person with whom the respondent has had a child, where
9 the presumption applies that the male parent is the father of the
10 child of the female parent under the Uniform Parentage Act (Part
11 3 (commencing with Section 7600) of Division 12).

12 ~~(e)~~

13 ~~(f)~~ A child of a party or a child who is the subject of an action
14 under the Uniform Parentage Act, where the presumption applies
15 that the male parent is the father of the child to be protected.

16 ~~(f)~~

17 ~~(g)~~ Any other person related by consanguinity or affinity within
18 the second degree.

19 SEC. 2. Section 273.5 of the Penal Code is amended to read:

20 273.5. (a) Any person who willfully inflicts upon a person
21 who is his or her spouse, former spouse, *registered domestic*
22 *partner, former registered domestic partner*, cohabitant, former
23 cohabitant, or the mother or father of his or her child, corporal
24 injury resulting in a traumatic condition, is guilty of a felony, and
25 upon conviction thereof shall be punished by imprisonment in the
26 state prison for two, three, or four years, or in a county jail for not
27 more than one year, or by a fine of up to six thousand dollars
28 (\$6,000) or by both that fine and imprisonment.

29 (b) Holding oneself out to be the husband or wife of the person
30 with whom one is cohabiting is not necessary to constitute
31 cohabitation as the term is used in this section.

32 (c) As used in this section, “traumatic condition” means a
33 condition of the body, such as a wound or external or internal
34 injury, whether of a minor or serious nature, caused by a physical
35 force.

36 (d) For the purpose of this section, a person shall be considered
37 the father or mother of another person’s child if the alleged male
38 parent is presumed the natural father under Sections 7611 and 7612
39 of the Family Code.

(e) (1) Any person convicted of violating this section for acts occurring within seven years of a previous conviction under subdivision (a), or subdivision (d) of Section 243, or Section 243.4, 244, 244.5, or 245, shall be punished by imprisonment in a county jail for not more than one year, or by imprisonment in the state prison for two, four, or five years, or by both imprisonment and a fine of up to ten thousand dollars (\$10,000).

(2) Any person convicted of a violation of this section for acts occurring within seven years of a previous conviction under subdivision (e) of Section 243 shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to ten thousand dollars (\$10,000), or by both that imprisonment and fine.

(f) If probation is granted to any person convicted under subdivision (a), the court shall impose probation consistent with the provisions of Section 1203.097.

(g) If probation is granted, or the execution or imposition of a sentence is suspended, for any defendant convicted under subdivision (a) who has been convicted of any prior offense specified in subdivision (e), the court shall impose one of the following conditions of probation:

(1) If the defendant has suffered one prior conviction within the previous seven years for a violation of any offense specified in subdivision (e), it shall be a condition thereof, in addition to the provisions contained in Section 1203.097, that he or she be imprisoned in a county jail for not less than 15 days.

(2) If the defendant has suffered two or more prior convictions within the previous seven years for a violation of any offense specified in subdivision (e), it shall be a condition of probation, in addition to the provisions contained in Section 1203.097, that he or she be imprisoned in a county jail for not less than 60 days.

(3) The court, upon a showing of good cause, may find that the mandatory imprisonment required by this subdivision shall not be imposed and shall state on the record its reasons for finding good cause.

(h) If probation is granted upon conviction of a violation of subdivision (a), the conditions of probation may include, consistent with the terms of probation imposed pursuant to Section 1203.097, in lieu of a fine, one or both of the following requirements:

1 (1) That the defendant make payments to a battered women's
2 shelter, up to a maximum of five thousand dollars (\$5,000),
3 pursuant to Section 1203.097.

4 (2) That the defendant reimburse the victim for reasonable costs
5 of counseling and other reasonable expenses that the court finds
6 are the direct result of the defendant's offense.

7 For any order to pay a fine, make payments to a battered
8 women's shelter, or pay restitution as a condition of probation
9 under this subdivision, the court shall make a determination of the
10 defendant's ability to pay. In no event shall any order to make
11 payments to a battered women's shelter be made if it would impair
12 the ability of the defendant to pay direct restitution to the victim
13 or court-ordered child support. Where the injury to a married person
14 is caused in whole or in part by the criminal acts of his or her
15 spouse in violation of this section, the community property may
16 not be used to discharge the liability of the offending spouse for
17 restitution to the injured spouse, required by Section 1203.04, as
18 operative on or before August 2, 1995, or Section 1202.4, or to a
19 shelter for costs with regard to the injured spouse and dependents,
20 required by this section, until all separate property of the offending
21 spouse is exhausted.

22 (i) Upon conviction under subdivision (a), the sentencing court
23 shall also consider issuing an order restraining the defendant from
24 any contact with the victim, which may be valid for up to 10 years,
25 as determined by the court. It is the intent of the Legislature that
26 the length of any restraining order be based upon the seriousness
27 of the facts before the court, the probability of future violations,
28 and the safety of the victim and his or her immediate family. This
29 protective order may be issued by the court whether the defendant
30 is sentenced to state prison, county jail, or if imposition of sentence
31 is suspended and the defendant is placed on probation.

32 ~~SECTION 1. Section 832.7 of the Penal Code is amended to~~
33 ~~read:~~

34 ~~832.7. (a) (1) Peace officer or custodial officer personnel~~
35 ~~records and records maintained by any state or local agency~~
36 ~~pursuant to Section 832.5, or information obtained from these~~
37 ~~records, are confidential and shall not be disclosed in any criminal~~
38 ~~or civil proceeding except by discovery pursuant to Sections 1043~~
39 ~~and 1046 of the Evidence Code. This section shall not apply to~~
40 ~~investigations or proceedings concerning the conduct of peace~~

1 officers or custodial officers, or an agency or department that
2 employs those officers, conducted by a grand jury, a district
3 attorney's office, the Attorney General's office, civilian review
4 boards, personnel boards, Police Commissions, or civil service
5 commissions.

6 (2) It is the intent of the Legislature in amending this section at
7 the 2007-08 regular session to abrogate the holding of the
8 California Supreme Court decision in *Copley v. Superior Court*
9 (2006) 39 Cal.4th 1272 and to restore public access to peace officer
10 records and to meetings and hearings that were open to the public
11 prior to that decision.

12 (b) Notwithstanding subdivision (a), a department or agency
13 shall release to the complaining party a copy of his or her own
14 statements at the time the complaint is filed.

15 (c) Notwithstanding subdivision (a), a department or agency
16 that employs peace or custodial officers may disseminate data
17 regarding the number, type, or disposition of complaints (sustained,
18 not sustained, exonerated, or unfounded) made against its officers
19 if that information is in a form which does not identify the
20 individuals involved.

21 (d) Notwithstanding subdivision (a), a department or agency
22 that employs peace or custodial officers may release factual
23 information concerning a disciplinary investigation if the officer
24 who is the subject of the disciplinary investigation, or the officer's
25 agent or representative, publicly makes a statement he or she knows
26 to be false concerning the investigation or the imposition of
27 disciplinary action. Information may not be disclosed by the peace
28 or custodial officer's employer unless the false statement was
29 published by an established medium of communication, such as
30 television, radio, or a newspaper. Disclosure of factual information
31 by the employing agency pursuant to this subdivision is limited
32 to facts contained in the officer's personnel file concerning the
33 disciplinary investigation or imposition of disciplinary action that
34 specifically refute the false statements made public by the peace
35 or custodial officer or his or her agent or representative.

36 (e) Notwithstanding subdivision (a), with respect to each
37 complaint—charge, disciplinary matter, or internal
38 investigation where the discipline imposed is either suspension,
39 demotion, removal, or other separation of the peace officer from

1 service with the department a department or agency that employs
2 peace officers or custodial officers shall release:

3 (1) ~~The name and badge number of the subject officer.~~

4 (2) ~~The name and current address of the complainant, unless~~
5 ~~the complainant requests that they be kept confidential.~~

6 (3) ~~A summary of the factual allegations contained in the~~
7 ~~complaint or other charging document.~~

8 (4) ~~The charges brought against the officer.~~

9 (5) ~~The factual findings with respect to the conduct at issue.~~

10 (6) ~~The discipline imposed or corrective action taken.~~

11 (f) ~~Notwithstanding subdivision (a), in cases in which a civilian~~
12 ~~review board or other government body outside the department or~~
13 ~~agency recommends imposition of discipline or makes or~~
14 ~~recommends a finding that an officer's conduct was out of policy~~
15 ~~or that a complaint was founded, and that finding is overturned or~~
16 ~~the recommendation is not followed by the department or agency~~
17 ~~that employs the peace officer, the department or agency may, in~~
18 ~~its discretion, release any information already released by the~~
19 ~~outside body, as well as a summary of the grounds for overturning~~
20 ~~the outside body's finding or not following its recommendation.~~

21 (g) (1) ~~The department or agency shall provide written~~
22 ~~notification to the complaining party of the disposition of the~~
23 ~~complaint within 30 days of the disposition.~~

24 (2) ~~The notification described in this subdivision shall not be~~
25 ~~conclusive or binding or admissible as evidence in any separate~~
26 ~~or subsequent action or proceeding brought before an arbitrator,~~
27 ~~court, or judge of this state or the United States.~~

28 (h) ~~Nothing in this section shall affect the discovery or disclosure~~
29 ~~of information contained in a peace or custodial officer's personnel~~
30 ~~file pursuant to Section 1043 of the Evidence Code.~~

31 (i) ~~Information disclosable pursuant to this section shall be made~~
32 ~~available upon request pursuant to Section 6253 of the Government~~
33 ~~Code.~~

34 SEC. 2. ~~If the Commission on State Mandates determines~~
35 ~~that this act contains costs mandated by the state, reimbursement~~
36 ~~to local agencies and school districts for those costs shall be made~~
37 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
38 ~~4 of Title 2 of the Government Code.~~

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